

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE DIVISION)

WILLIAM SILVERSTEIN, an individual,)	Case No.: C 05-00160 PVT
)	
Plaintiff,)	PLAINTIFF'S OBJECTIONS TO
)	DECLARATION OF PATRICIA
vs.)	ESQUADA
)	
EXPERIENCED INTERNET.COM, INC., a)	Date: July 19, 2005
Florida corporation,)	Time: 10:00 a.m.
PATRICIA QUESADA, an individual,)	Courtroom: 5
SYLVIA BEDOYA, an individual, and)	
DOES 1-50,)	
)	
Defendants.)	
)	

Plaintiff William Silverstein hereby objects to the following evidence presented by Defendants in connection with the motion for an order quashing service of summons set for hearing July 19, 2005, before this Court. In general, Plaintiff objects that accepting declarations changes the nature of the proceeding from a Rule 12(b)(6) motion to a motion for summary judgment without notice to Plaintiff.

1. Defendant's Declaration at 11:25-27 ("EIC does not operate the website at www.sexsearch.com to the extent that 'operate' involves the running of a business through use of that domain" to the extent it asserts legal conclusions where declarant is not competent to make such legal conclusions, assumes facts not in evidence and is not the best evidence of the asserted statement.

2. Defendant's Declaration at 12:21-23 ("Based on Defendants' investigation, Defendants believe that the emails were sent by a person that was terminated from the Sexsearch affiliate program on or before October 18, 2004") to the extent it asserts facts purportedly beyond the declarant's personal knowledge, to the extent it assumes facts not in evidence, and to the extent it makes no sense whatever.

3. Defendant's Declaration at 12:26-13:1 ("EIC's customer's affiliate program operates through strict terms and conditions, which not only include anti-spamming rules, but explicitly instruct the affiliate that he is not an agent of that customer") to the extent it is not the best evidence, to the extent it asserts legal conclusions where declarant is not competent to make such legal conclusions, to the extent it incorporates hearsay, and to the extent it assumes facts not in evidence.

INTERNET ATTORNEY

DATED: June 28, 2005

BY: /s/

TIMOTHY J. WALTON
Attorney for the Plaintiff